

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DONALD R. MCPHAIL,	:	CIVIL ACTION NO. 1:08-CV-0029
Plaintiff	:	
	:	(Judge Conner)
v.	:	
	:	
ES3 LLC,	:	
Defendant	:	

ORDER

AND NOW, this 30th day of August, 2010, upon consideration of the motion in limine (Doc. 105), filed by plaintiff Donald McPhail (“McPhail”), wherein McPhail requests that the court preclude defendant ES3 LLC (“ES3”) from calling certain individuals as witnesses at trial on the basis that ES3 failed to provide the identities of these individuals during discovery, and wherein McPhail seeks recovery of the attorney’s fees and costs incurred in bringing the pending motion, and upon further consideration of ES3’s response (Doc. 107) to McPhail’s motion in limine, wherein ES3 avers that it does not intend to call these witnesses at trial, and wherein ES3 argues that McPhail is not entitled to attorney’s fees and costs, and it appearing that the pending motion is moot, and it further appearing that the issue could have been resolved informally between the parties, without resort to motion practice, it is

hereby ORDERED that the motion in limine (Doc. 105) is DENIED as MOOT and the request for attorney's fees and costs is DENIED.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge